

APR 02 2007

PTO/SB/64a (09-06)

Approved for use through 03/31/2007. OMB 0851-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED FOR FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING (37 CFR 1.137(f))	Docket Number (Optional) AFD 639
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First named inventor: Ivan I. Aksenov et al.

Application No.: 10/693,482

Art Unit: 1753

Filed: October 21, 2003

Examiner: Steven Versteeg

Title: Filtered Cathodic-Arc Plasma Source

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX (571) 273-8300

NOTE: If information or assistance is needed in completing this form, please contact Petitions
Information at (571) 272-3282.

The above-identified application became abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational international treaty that requires publication of applications eighteen months after filing. The date of abandonment is the day after the expiration date of the forty-five (45) day period set in 35 U.S.C. 122(b)(2)(B)(iii).

PURSUANT TO 37 CFR 1.137(f), APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION
UNDER 37 CFR 1.137(b)

1. Petition fee

☐ Small entity-fee \$ _____ (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.☒ Other than small entity -- fee \$ 1,500.00 (37 CFR 1.17(m))

2. Notice of Foreign or International Filing (35 U.S.C. 122(b)(2)(B)(iii) and 37 CFR 1.213(c))

Subsequent to the filing of the above-identified application, an application was filed in another country, or under a multinational international treaty (e.g., filed under the Patent Cooperation Treaty), that requires publication of applications eighteen months after the filing. The filing date of the subsequently filed foreign or international application is 10/15/04, 10/20/04.

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This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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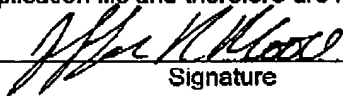
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

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STATEMENT: The entire delay in filing the required notice of a foreign or international filing from the due date for the required notice until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D)).]

WARNING:

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.


Signature24 Apr 07
Date

Jeffrey R. Moore

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987

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Enclosures: ☒ Fee Payment☒ Additional sheets containing statements establishing unintentional delay☐ Other: _____**CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]**

I hereby certify that this correspondence is being:

☐ Deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: Mail Stop Petition, Commissioner for Patents, P. O. Box 1450, Alexandria, VA 22313-1450.☒ Transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.4/2/07

Date


Signature

Lynnita C. Robertson

Typed or printed name of person signing certificate

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 10/693,482 Confirmation No. : 2529
Applicant(s) : Ivan I. Aksenov et al.
Filed : October 21, 2003
TC/AU : 1753
Examiner : Steven H. VerSteeg
Docket No. : AFD 639
Customer No. : 26902

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

**STATEMENT ESTABLISHING UNINTENTIONALLY DELAY
37 CFR 1.137(b)**

The entire delay in filing the required reply was unintentional.

Rights in the instant invention were early divided into United States rights owned by the U.S. Air Force and foreign rights owned by the employer of several co-inventors, the Kharkov Institute of Physics of Kharkov, Ukraine, 61108. Under the agreement establishing these rights the U.S. Air Force agreed to draft and file a United States patent application concerning the invention. The Kharkov Institute hoped to find funding to file one or more corresponding priority applications based on this United States application in selected other parts of the world. The likelihood of these corresponding applications was never clarified during preparation of the United States application.

The normal practice of the U.S. Air Force is to request non publication of filed patent applications. This practice has been followed since commencement of United States application publications several years ago and was initiated by others in the U.S. Air Force patent procurement staff. This practice also includes an almost total absence of foreign filing activity. In fact the undersigned attorney has never, in some twenty years of work, prosecuted a U.S. Air Force patent application in which foreign filing has been involved. The nonpublication procedure was routinely followed at this office and resulted in the filed

request for non publication. As a result of last minute haste to obtain application signatures and complete the U.S. filing process it appears that the possibility of foreign filings by persons other than our office and a special consideration over whether a request for non-publication of the application was appropriate in this isolated instance was inadvertently never addressed during the application process.

Months after these events accompanying U.S. filing of the application, in fact just prior to expiration of the one year convention period, applicants' U.S. Air Force attorneys received requests for certified copies of the application from the foreign inventors and thus an indication of their possible continuing interest in a foreign filing of the application. These requests came second hand from the foreign inventors rather than from an engaged law firm or other foreign practitioner. The work and expense of accomplishing timely second hand delivery of these copies to the foreign inventors was borne by the U.S. Air Force and hence focused attention in our office on replying activity rather than on details (including 35 U.S.C. 122 requirements) considered during the earlier United States filing process.

The remainder of this sequence can be readily surmised, there was in fact foreign filing accomplished by the foreign inventors and their Kharkov Institute employer (notably not by the U.S. Air Force). This filing occurred just days prior to expiration of the convention period. Although notice of this filing arrived within a week of its accomplishment this apparently routine reception again failed to raise questions in inexperienced minds regarding the 35 U.S.C. 122 requirements, including the 45 day suspense period for notice of such filing to be sent to the U.S. Patent and Trademark Office.

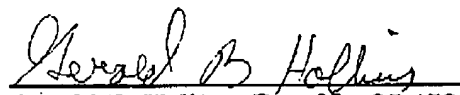
We identified our error and attempted to correct it by petition in our 9/19/05 response to the examiners 7/20/05 office action. The examiner's rejection on 10/12/2005 was received after a discussion with him on 10/6/2005 that indicated to applicants that the petition would go forward. The petition did go forward however the Decision on Petition of 3/13/2006 was never received by this office. At least the decision was not in the application file or otherwise available. The first page of the Decision on Petition was only recently found on PAIRS during a search in response to an inquiry on another issue. Our records indicate we were never charged the petition fee, nor did we receive the Decision on Petition. This response was prepared as soon as possible upon discovery of the status of the application.

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Applicants therefore believe the instant failure to notify the U.S. Patent and Trademark Office of foreign filings is fairly characterized as being "unintentional." Applicants thus include herewith a petition accomplished on a substitute form PTO SB64a together with approval to pay the \$1500.00 "unintentional" petition fee requesting revival of the deemed abandoned application. The petition includes the exact filing dates of the foreign applications. One was filed on 10/15/04 and two were filed 10/20/04.

The instant petition is filed as soon as possible after a reopening of the application file and achieving a complete understanding of the factual situation attending the applications and the related U.S. Patent and Trademark Office rules.

Respectfully submitted,


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